



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/956,950	09/21/2001	Yasuo Toyoshima	0445-0308P	2444
2292	7590	05/18/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			LONEY, DONALD J	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/956,950

Applicant(s)

TOYOSHIMA ET AL

Examiner

Donald Loney

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-8 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 2-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/04/04, 02/26/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 26, 2004 has been entered.

2. Upon further consideration by the examiner, claims 2-8 which were indicated as allowable in the Final Rejection, dated November 20, 2003, will be rejected as indicated below. The examiner included claims 2-6 in the explanation of the rejections in paragraphs 4 and 5 in the Final Rejection, but inadvertently indicated claims 2-6 as allowable on the Office Action Summary form PTOL-326.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1772

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-6 and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO96/00545 to Raidel.

Raidel teaches a topsheet that contains an uneven profiled sheet (9) and a base sheet (7). The heights H of the uneven profile are 1-20mm. Applicant's claim 2 recites a height of 1-15mm, while claims 3-5 do not contain a height limitation. Claim 6 recites the width of the joints W1 of .1-10mm, spacing W2 of 1-30mm and distance between folds W3 as 0-5mm. Raidel discloses a W1, indicated as F of .2-10mm, a W2, indicated as A of .5 to 10mm (this is figured as half of A, which is 1-20mm) and a W3 of .5-10mm (this is figured as half of A also since A is the width of an entire cycle of the wavy profile). The examiner has attempted to relate the three widths as indicated by the applicant in figure 2 to the corresponding ones disclosed in Raidel even though the applicant and Raidel use different letters to correspond to each numerical value. Refer to figure 2 and page 4 last paragraph through page 5 paragraph 3. The properties recited in claims 2-5 and 8 are deemed inherent in the product, absence a showing to the contrary, since the sheets are made of the same materials disclosed by the applicant on page 12 of the specification (i.e. PP, PE, polyester). The obviousness rejection has been included since the examiner cannot determine the extent of inherency. See *In re Fitzgerald*, 619 F.2nd67, 205 USPQ 594 (CCPA 1980). Claim 6

Claim Rejections - 35 USC § 103

Art Unit: 1772

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raidel in view of Schultink et al.

The primary reference teaches the invention substantially as recited except for the particular Ω -shaped cross section contour of the waves. ~

Schultink et al teaches a topsheet containing the particular shape of the wave recited by the applicant (see figure 5f, 5g and 5j), along with many others similar to Raidel (see figures 5a-5d).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Raidel to form the wavy profile as taught by Schultink et al, motivated by the fact that Schultink et al teaches that many alternative forms can be used, including the one as disclosed in Raidel and the one recited in applicant's claim 7.

Claim 11 is deemed allowable over the prior art of record since the prior art fails to teach a topsheet as recited wherein there are two different sized protrusions wherein the smaller ones are located on borders between adjacent protrusions of the larger ones.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Loney whose telephone number is (571) 272-1493. The examiner can normally be reached on Mon-Fri. 8AM-4PM, maxi-flex schedule.

Art Unit: 1772

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Donald Loney
Primary Examiner
Art Unit 1772

DJL.D.Loney
05/13/04